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# Labor Organizations and Labor Relations HB 361

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## LABOR AND INDUSTRIAL RELATIONS

***Labor Organizations and Labor Relations: Amend Article 2 of Chapter 6 of Title 34 of the Official Code of Georgia Annotated, Relating to Membership in Labor Organizations, so as to Provide for Definitions; Provide for a Statement of Rights Under Federal Law; Provide for Certain Contract and Agreement Employment Rights; Provide for Policy Concerning Passage of Laws, Ordinances, or Contracts that Waive or Restrict Federal Labor Laws; Provide for Changes to Agreements and Contracts Permitting Labor Organizations to Deduct Fees from Employees' Earnings; Provide for Related Matters; Provide for Severability; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 34-6-20 (amended); -20.1 (new); -21, -25, -26 (amended)
BILL NUMBER:	HB 361
ACT NUMBER:	192
GEORGIA LAWS:	2013 Ga. Laws 623
SUMMARY:	The Act reiterates both employee and employer rights protected under federal labor law and expresses new public policy on laws, ordinances, or contracts that waive or restrict these rights. The Act also allows certain employees who withdraw from a union to immediately cancel their automatic payroll deductions for union dues.
EFFECTIVE DATE:	July 1, 2013

### *History*

Between 1935 and 1945, union membership in the United States tripled,<sup>1</sup> and nearly twenty-four percent of the national workforce

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1. U.S. Dep't of Labor, Bureau of Labor Statistics, Div. of Devs. in Labor-Mgmt. Relations, Table A—Union Membership in the United States, 1930–80, available at <ftp://ftp.bls.gov/pub/special.requests/collbarg/unmem.txt>.

was unionized.<sup>2</sup> In response to this tremendous growth, problems with the Wagner Act,<sup>3</sup> and a series of large-scale strikes that took place at the close of the Second World War, Congress introduced more than 250 union-related bills in 1947.<sup>4</sup> The passage of the Taft-Hartley Act<sup>5</sup> over President Truman's veto on June 27 of that same year delivered a significant blow to organized labor, outlawing secondary boycotts, strikes to enforce unfair labor practices, jurisdictional strikes, closed shop and union shop arrangements that discriminated against non-union members,<sup>6</sup> and automatic dues and fees "check off," or paycheck deduction authorization.<sup>7</sup> Additionally, section 14(b) of the Act paved the way for the proliferation of right-to-work laws at the state level despite the federal government's traditional sphere of influence over collective bargaining agreements and other labor matters.<sup>8</sup>

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2. *Id.*

3. The Wagner Act, also known as the National Labor Relations Act of 1935, is the foundational law providing for employee and labor union rights in the United States: it gave workers the right to organize and join labor unions, to bargain collectively through representatives of their own choosing, and to strike. Wagner Act, ch. 372, §§ 7, 9, 49 Stat. 452–53 (1935) (current version at 29 U.S.C. §§ 157, 159). It also created the National Labor Relations Board ("NLRB") to administer the Act and gave it the power to certify that a union represented a particular group of employees. Wagner Act, ch. 372, § 3, 49 Stat. 451 (1935) (current version at 29 U.S.C. § 153). The Act's fault, however, was its failure "to protect union members from arbitrary conduct by unions and union officers." 9 Emp't Coordinator § 1:26 (2013).

4. 9 Emp't Coordinator § 1:27 (2013) (citing H. Rep. No. 245, at 3–4 (1947); S. Rep. No. 105, at 2 (1947)); Michael Pearson, *What's the 'Right-To-Work' Battle All About?*, CNN, Dec. 12, 2012, <http://www.cnn.com/2012/12/11/us/right-to-work-q-and-a> (last visited April 5, 2013) (describing 1947 as the right-to-work "boom year").

5. The Taft-Hartley Act, formally known as the Labor Management Relations Act of 1947, sought to restore the "full flow of commerce" in the United States, a goal to which Congress gave express treatment: "Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest." 29 U.S.C. § 141(b) (2006).

6. "Closed shop" and "union shop" arrangements commonly refer to the practice of conditioning hire or retention on union membership, respectively. Nat'l Labor Relations Bd., 1947 Taft-Hartley Substantive Provisions, <http://www.nlrb.gov/who-we-are/our-history/1947-taft-hartley-substantive-provisions> (last visited May 23, 2013).

7. See National Management Relations Act of 1947, ch. 120, § 8, 61 Stat. 140–43, (current version at 29 U.S.C. § 158 (2006)) (listing unfair labor practices); 9 Emp't Coordinator § 1:32 (2013) (chart comparing the Taft-Hartley amendments to the labor friendly Wagner Act provisions).

8. Section 14(b) states: "Nothing in this [Act] shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

On March 27, 1947, the Georgia General Assembly passed the state's first right-to-work law.<sup>9</sup> It was not alone in its effort to restrain the power of labor unions: Arizona, Arkansas, Iowa, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee and Virginia also passed right-to-work statutes in 1947.<sup>10</sup> Now twenty-four states—including all of the Deep South—have right-to-work laws.<sup>11</sup> Ten states have enshrined such principles in their constitutions.<sup>12</sup>

Currently, when a Georgia employee voluntarily joins a union and agrees to contribute dues, the employee signs a form allowing those dues to be deducted from his or her paycheck.<sup>13</sup> Prior to the passage of House Bill (HB) 361, that authorization could not be revoked for a full year.<sup>14</sup> As a result, even though an employee chose to leave their union, the union required the employee to continue contributing a portion of their paycheck to dues or fees even though he or she was no longer a member or no longer supported the union's cause.<sup>15</sup> To rectify this value proposition by “ensur[ing] that the unions [operate] in such a way that their members believe is relevant to them at the present time” and to respond to unspecified attempts at the local government level to require union labor in public contracts,<sup>16</sup>

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29 U.S.C. § 164(b) (2006). Through this section, Taft-Hartley expressly withheld federal preemption from state right-to-work laws. 4 James W. Wimberly, Jr., *Georgia Employment Law* § 6 (4th ed. 2008).

9. 1947 Ga. Laws 616 (codified at O.C.G.A. §§ 34-6-6, -7, -20 to -27 (1947)). A right-to-work law is a statute or constitutional provision that guarantees employees cannot be compelled, as a condition of employment, to join or not to join, nor to pay dues to a labor union. *Right to Work Resources*, Nat'l Conference of State Legislatures, <http://www.ncsl.org/issues-research/labor/right-to-work-laws-and-bills.aspx#add> (last visited May 23, 2013) [hereinafter *NCSL Right to Work*]; *Right to Work Frequent Asked Questions*, Nat'l Right to Work Legal Def. Found., Inc., [http://www.nrtw.org/b/rtw\\_faq.htm](http://www.nrtw.org/b/rtw_faq.htm) (last visited May 23, 2013).

10. *NCSL Right to Work*, *supra* note 9; Michael Pearson, *What's the 'Right-To-Work' Battle All About?*, CNN, Dec. 12, 2012, <http://www.cnn.com/2012/12/11/us/right-to-work-q-and-a> (last visited April 5, 2013).

11. The twenty-four states in which workers may choose or refuse union membership are: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. *NCSL Right to Work*, *supra* note 9. Michigan and Indiana most recently enacted right-to-work laws in 2012, the first states to do so since Idaho in 1985. *Id.*

12. *Id.*

13. *State Labor & Contract Law Reforms—HB 361 and HB 362*, Ga. Chamber Ctr. for Competitiveness, (2013), available at <http://foundation.gachamber.com/gccfoundation/wp-content/uploads/2013/03/State-Labor-Law-Changes-1pgr-2013.pdf> [hereinafter *Ga. Chamber Labor Summary*].

14. *Id.*

15. *Id.*

16. Video Recording of House Industry & Labor Committee, Feb. 22, 2013 at 6 min., 37 sec.

Representative Edward Lindsey (R-54th) introduced HB 361, in conjunction with HB 362,<sup>17</sup> during the 2013 Georgia General Assembly legislative session.<sup>18</sup> The bill first ensures “paycheck protection” by granting employees the power to revoke their written authorization of dues or fee deduction at any time upon request rather than on only an annual basis.<sup>19</sup> Second, the bill “reinforces” the state’s right-to-work status by clarifying already-existing rights of employers, employees and labor unions under federal law.<sup>20</sup>

### *Bill Tracking of HB 361*

#### *Consideration and Passage by the House*

Representatives Edward Lindsey (R-54th), Mark Hamilton (R-24th), and Barry Fleming (R-121st) sponsored HB 361 in the House of Representatives.<sup>21</sup> The House read the bill for the first time on

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(remarks by Rep. Edward Lindsey (R-54th)), [http://media.legis.ga.gov/hav/13\\_14/2013/committees/indust/indust022213EDITED.wmv](http://media.legis.ga.gov/hav/13_14/2013/committees/indust/indust022213EDITED.wmv); see also Telephone Interview with Rep. Edward Lindsey (R-54th) (Apr. 16, 2013) [hereinafter Lindsey Interview].

17. Lindsey Interview, *supra* note 16 (noting that HB 361 should be read in conjunction with HB 362); see also State of Georgia Final Composite Status Sheet, HB 362, May 9, 2013. HB 362 prohibits state and local contracting proposals from requiring project labor agreements (“PLAs”) as a prerequisite for a company’s eligibility to bid or to be awarded a governmental contract. Ga. Chamber Labor Summary, *supra* note 13. A PLA is a pre-hire collective bargaining agreement between a private firm and one or more labor organizations that is designed to provide a uniform labor policy for all workers involved in a specific project. See Exec. Order No. 13502, 48 C.F.R. § 22.5 (2013) (statement of President Obama’s policy that encourages the use of project labor agreement for complex federal construction projects); *What Is a Project Labor Agreement and How Does it Affect Workers?*, Nat’l Right to Work Legal Def. Found., Inc., [http://www.nrtw.org/neutrality/na\\_6.htm](http://www.nrtw.org/neutrality/na_6.htm) (last visited May 24, 2013). Agreements typically outline the expectations of company management during union organizing efforts and establish wage rates, benefits, working conditions, and the dispute resolution processes. 48 C.F.R. § 22.504 (2013). HB 362 would also prohibit any governmental entity from making laws, ordinances or regulations that require businesses to enter into PLAs with unions. Ga. Chamber Labor Summary, *supra* note 13. Nevertheless, HB 362 never came to a vote in the Senate after the House passed it by a vote of 110 to 59 on March 4, 2013. State of Georgia Final Composite Status Sheet, HB 362, May 9, 2013.

18. Sen. Brandon Beach (R-21st), the bill’s sole sponsor in the Senate, echoed the author’s intent by commenting that the bill “cement[s] [Georgia’s] status as the economic hub of the southeast,” and “solidif[ies] Georgia’s stance as a right-to-work state by protecting employee’s rights and boosting market competition.” Press Release, Georgia Senate Press Office, Sen. Brandon Beach Sponsors Bill Revising Labor Laws to Protect Employees (Mar. 26, 2013), available at <http://senatepress.net/sen-brandon-beach-sponsors-bill-revising-labor-laws-to-protect-employees.html> [hereinafter Beach Press Release].

19. O.C.G.A. §§ 34-6-25(a), -26(a) (Supp. 2013).

20. O.C.G.A. § 34-6-20.1 (Supp. 2013).

21. HB 361, as introduced, 2013 Ga. Gen. Assem.

February 19, 2013,<sup>22</sup> and for the second time on February 20, 2013.<sup>23</sup> Speaker of the House David Ralston (R-7th) assigned the bill to the House Industry and Labor Committee, which favorably reported a Committee substitute on February 22, 2013.<sup>24</sup> This version was subsequently withdrawn from the General Calendar and recommitted to the Industry and Labor Committee by the Rules Committee on February 27, 2013.<sup>25</sup> The Committee favorably reported a second substitute on the same day.<sup>26</sup> The House read and adopted the second Committee substitute on March 4, 2013 by a vote of 110 to 57 largely on party lines.<sup>27</sup>

*Consideration and Passage by the Senate*

Senator Brandon Beach (R-21st) sponsored HB 361 in the Senate, and the bill was first read on March 5, 2013.<sup>28</sup> Lieutenant Governor Casey Cagle (R) then assigned the bill to the Senate Insurance and Labor Committee,<sup>29</sup> which drafted a substitute that revised the portion of Article 7 of Chapter 8 of Title 34 of the Official Code of Georgia Annotated relating to employment security benefits.<sup>30</sup> The Senate Insurance and Labor Committee favorably reported a Committee substitute on March 20, 2013.<sup>31</sup> The bill was read a second time on March 21, 2013, and a third time on March 25, 2013.<sup>32</sup> During the floor debate on March 25, Senators Joshua McKoon (R-29th) and Jeff Mullis (R-53rd) offered an amendment to: 1) ensure HB 361's labor organization membership strictures would not impair any contract or collective bargaining agreement already in place, and 2) permit private business entities to decide prospectively

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22. State of Georgia Final Composite Status Sheet, HB 361, May 9, 2013.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. State of Georgia Final Composite Status Sheet, HB 361, May 9, 2013.

28. *Id.* Senator Beach's sponsorship, introduction, and defense of HB 361 were his first such experiences on the Senate floor. Beach Press Release, *supra* note 18.

29. State of Georgia Final Composite Status Sheet, HB 361, May 9, 2013.

30. HB 361 (SCS), 2013 Ga. Gen. Assem. The Senate Committee substitute sought to amend O.C.G.A. § 34-8-196, the Code provision that determines unemployment eligibility for aliens and persons performing certain temporary or seasonal services. *Id.*

31. State of Georgia Final Composite Status Sheet, HB 361, May 9, 2013.

32. *Id.*

whether to allow the unrestricted opt-in and -out practices adopted by HB 361 or to maintain an annual enrollment process as they do with other payroll deduction items.<sup>33</sup> The Senators' amendment failed by a vote of 22 to 27.<sup>34</sup> Senator Steve Henson (D-41st) offered a second amendment to strike in its entirety section 6, but the amendment failed by a vote of 16 to 35.<sup>35</sup> Also on March 25, 2013, the Senate adopted the Committee substitute as read by a vote of 36 to 16, and transmitted it back to the House of Representatives.<sup>36</sup> On March 28, 2013, the House of Representatives disagreed with the Senate Insurance and Labor Committee substitute.<sup>37</sup> On the same day, the Senate subsequently receded from insisting on its substitute by a vote of 35 to 17.<sup>38</sup>

### *The Act*

The Act amends Title 34 of the Official Code of Georgia Annotated to provide a clear statement of rights protected under federal labor law and to redefine the scope of Georgia's public policy regarding labor organizations, with particular emphasis on the means through which employees may withdraw from union membership and suspend their corresponding payment of dues.<sup>39</sup> Section 1 of the Act modifies the definition of an "employer" to exclude transit authorities like MARTA<sup>40</sup> that are subject to certain Federal Transit Act

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33. Failed Senate Floor Amendment to HB 361, introduced by Sens. Joshua McKoon (R-29th) and Jeff Mullis (R-53rd), Mar. 25, 2013. *See also* Video Recording of Senate Proceedings, Mar. 25, 2013 at 1 hr., 46 min., 5 sec. (remarks by Sen. Joshua McKoon (R-29th)), <http://www.gpb.org/lawmakers/2013/day-38> [hereinafter Senate Video].

34. Failed Senate Floor Amendment to HB 361, introduced by Sens. Joshua McKoon (R-29th) and Jeff Mullis (R-53rd), Mar. 25, 2013; Georgia Senate Voting Record, HB 361 (Mar. 25, 2013).

35. Failed Senate Floor Amendment to HB 361, introduced by Sen. Steve Henson (D-41st), Mar. 25, 2013; Georgia Senate Voting Record, HB 361 (Mar. 25, 2013); *see also* Senate Video, *supra* note 33 at 58 min., 57 sec. (remarks by Sen. Steve Henson (D-41st)).

36. State of Georgia Final Composite Status Sheet, HB 361, May 9, 2013.

37. *Id.*

38. *Id.*

39. O.C.G.A. §§ 34-6-20.1, -25, -26 (Supp. 2013).

40. The Metropolitan Atlanta Rapid Transit Authority (MARTA) was created by the Georgia legislature in 1965 and opened its first station in 1979. *MARTA's Past and Future*, Metro Atlanta Rapid Transit Auth., <http://www.itsmarta.com/marta-past-and-future.aspx> (last visited July 20, 2013).

provisions.<sup>41</sup> This section further defines “federal labor laws” and “governmental body.”<sup>42</sup>

Section 2 of the Act adds a new Code section, 34-6-20.1, which serves as a baseline “statement of rights” Georgia recognizes pursuant to federal law, specifically those outlined in the National Labor Relations Act,<sup>43</sup> the Labor Management Relations Act,<sup>44</sup> and corresponding administrative regulations and common law.<sup>45</sup> This section emphasizes the protection of employees’ concerted activity and the right to participate in a secret ballot election.<sup>46</sup> Additionally, it outlines employers’ rights, including the right to oppose recognition of a union, to restrict access to its property to the maximum extent allowed by federal law, and to maintain the confidentiality of sensitive and private employee information.<sup>47</sup>

Section 3 of the Act expands upon an existing Code section, 34-6-21, to express new policy concerning the passage of laws, ordinances, or contracts that waive or restrict employees’ or employers’ rights under federal labor laws.<sup>48</sup> All levels of governmental and quasi-governmental organizations—including cities, municipalities, counties, public bodies, agencies, boards, or commissions—are prohibited from passing or imposing any law, ordinance, regulation or condition that requires an employer in whole or in part to agree to limitations on its right to engage in collective bargaining with a labor organization, to lock out employees, or to operate during a work stoppage.<sup>49</sup> Moreover, neither employers nor labor organizations may be forced to enter into any agreement that undermines established processes through which employees make decisions regarding representation and collective bargaining rights provided for by federal labor laws.<sup>50</sup>

Sections 4 and 5 of the Act address deductions and contracts allowing deductions of labor organization fees from employees’

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41. O.C.G.A. § 34-6-20(2) (Supp. 2013).

42. O.C.G.A. § 34-6-20(4) & (5) (Supp. 2013).

43. 29 U.S.C. §§ 151–169 (2012).

44. *See supra* text accompanying note 5.

45. O.C.G.A. § 34-6-20.1 (Supp. 2013).

46. O.C.G.A. § 34-6-20.1(1) & (2) (Supp. 2013).

47. O.C.G.A. § 34-6-20.1(3) (Supp. 2013).

48. O.C.G.A. §§ 34-6-21(b)–(d) (Supp. 2013).

49. O.C.G.A. § 34-6-21(c) (Supp. 2013).

50. O.C.G.A. § 34-6-21(d) (Supp. 2013).



wages or other earnings.<sup>51</sup> Both sections eliminate language dictating that employees' authorization of fee deduction is irrevocable within a one-year period.<sup>52</sup> Rather, employees' authorization now may be revoked at any time.<sup>53</sup> These sections go on to preclude retroactive application of the fee cancellation provisions.<sup>54</sup> Unique to section 4 is a clause precluding application of the paycheck protection requirements to certain collective bargaining agreements and professional associations.<sup>55</sup>

### *Analysis*

In 2012, union membership declined in thirty-four states and total membership dropped from 11.8% to 11.3% of employed workers, a ninety-seven year low.<sup>56</sup> Georgia, however, bucked the national trend: it was one of only thirteen states, along with the District of Columbia, to report union growth.<sup>57</sup> Union membership climbed from 153,000—3.9% of the state's employed workers—in 2011 to 171,000—4.4% of the state's employed workers—in 2012.<sup>58</sup> This resurgence is largely attributed to the film and television industry

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51. O.C.G.A. §§ 34-6-25 & -26 (Supp. 2013).

52. O.C.G.A. §§ 34-6-25(a), -26(a) (Supp. 2013).

53. *Id.*

54. O.C.G.A. §§ 34-6-25(b), -26(b) (Supp. 2013).

55. O.C.G.A. § 34-6-25(c) (Supp. 2013). The exemption of "professional association[s] whose membership is exclusively composed of educators, law enforcement officers, or firefighters not engaged or engaging in contracting or collective bargaining" was purposeful. Similar paycheck protection language was introduced in 2010 in an eleventh hour addition to HB 1195 that would have required all state teachers, firefighters, and police officers to send written authorization every six months via certified mail to their employers to affect wage and dues deductions. HB 1195 (SCS), Ga. Gen. Assem. 2010. The Senate Committee's substitute was ultimately rejected out of concern for germaneness and for creating a "tremendous administrative burden that would likely serve to kill off labor organizations." Karen Trapnell & Heather Wagner, *Labor and Industrial Relations*, 27 GA. ST. U. L. REV. 117, 124 (2010).

56. *Union Membership News Release*, U.S. Dep't of Labor, Bureau of Labor Statistics, Union Members—2012, at tbl. 5 (Jan. 23, 2013), [http://www.bls.gov/news.release/archives/union2\\_01232013.htm](http://www.bls.gov/news.release/archives/union2_01232013.htm) [hereinafter BLS News Release]; Steven Greenhouse, *Share of the Work Force in a Union Falls to a 97-Year Low, 11.3%*, N.Y. Times, Jan. 23, 2013, available at <http://www.nytimes.com/2013/01/24/business/union-membership-drops-despite-job-growth.html>.

57. BLS News Release, *supra* note 56, at tbl. 5; see also David Koeppl, *An Unexpected Bright Spot for Unions*, CNN Money, May 21, 2013, <http://management.fortune.cnn.com/2013/05/21/unions-georgia-film-tv/>; David Flessner, *Labor Pains: Union Membership Drops Nationwide, But Rebounds in Tennessee and Georgia*, Times Free Press, Feb. 10, 2013, <http://www.timesfreepress.com/news/2013/feb/10/labor-pains-union-membership-drops>.

58. BLS News Release, *supra* note 56, at tbl. 5.

boom that has positioned Georgia as one of the most desirable shooting locations in the United States.<sup>59</sup> Entertainment industry growth has translated into increased union jobs for construction set builders, stage technicians, glaziers, hairdressers, and truck drivers who help move equipment and trailers to film sites.<sup>60</sup> The general rebound in manufacturing and construction also helped boost membership rolls.<sup>61</sup>

This curious growth in union membership, however, cannot be colored in any serious way as an attack on Georgia's longstanding and staunch right-to-work principles. For over two decades, less than ten percent of Georgia workers have joined unions, and since 2008, that figure has remained below five percent—among the lowest rates in the nation.<sup>62</sup> HB 362 unsuccessfully sought to prevent state entities that contract for public works construction from mandating use of union labor, but even proponents of the failed bill admitted that such mandates are rare.<sup>63</sup> Furthermore, Republican Governor Nathan Deal and the GOP legislative majority consistently garner significant support from a strong business lobby, including organizations like the Georgia Chamber of Commerce.<sup>64</sup>

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59. Flessner, *supra* note 57 (noting that “Georgia is poised to become the third biggest state for movie making, traditionally a heavily unionized business, behind only California and New York”); Koeppel, *supra* note 57 (ranking Georgia in the top five states in film production).

60. Koeppel, *supra* note 57.

61. Flessner, *supra* note 57.

62. BLS News Release, *supra* note 56, at tbl. 5; Unionstats, Union Membership & Coverage Database, II. State: Union Membership, Coverage, Density, and Employment by State and Sector, 1983-2012, available at <http://www.unionstats.com> (last visited June 29, 2013). In 2012, eight states had union membership rates below 5%. *Id.* North Carolina had the lowest rate (2.9%), followed by Arkansas (3.2%), South Carolina (3.3%), Mississippi (4.3%), Virginia and Georgia (4.4%), and Idaho and Tennessee (4.8%). *Id.*

63. See, e.g., Andy Conlin, *Georgia Open Competition for Public Contracting Language Still Alive*, The Truth About Project Labor Agreements, Mar. 13, 2013, <http://thetruthaboutplas.com/2013/03/13/georgia-open-competition-for-public-contracting-language-still-alive> (“If passed, the language in [HB 362] would prevent government entities from requiring contractors to enter into agreements with construction union bosses in order to perform work on public construction projects. While these mandates are rare in Georgia, media outlets have indicated this kind of mandate could be a part of the new Atlanta Falcons’ stadium deal.”).

64. Koeppel, *supra* note 57. See also Dave Williams, *Georgia Chamber Rates Lawmakers*, Atlanta Bus. Chronicle, May 20, 2013, [http://www.bizjournals.com/atlanta/blog/capitol\\_vision/2013/05/georgia-chamber-rates-lawmakers.html](http://www.bizjournals.com/atlanta/blog/capitol_vision/2013/05/georgia-chamber-rates-lawmakers.html); *Legislative Priorities*, Ga. Chamber of Commerce, (2013), available at <http://www.gachamber.com/Legislative-Agenda.legagenda.0.html>; Ga. 2013 *Legislative Scorecard*, Chamber of Commerce, (2013), available at <http://www.gachamber.com/uploads/2013%20Georgia%20Chamber%20Scorecard%20WEB.pdf>.

Even if the aforementioned union gains in Georgia constitute a threat to its competitiveness, it is a small one given the scope of the response in HB 361. In fact, the debate surrounding the bill evolved into a back-and-forth over Georgia's status as a right-to-work state rather than the merits of the changes and additions themselves. In the House, Representative Edward Lindsey (R-54th), the Majority Whip and author of the Act, framed the debate by asking his colleagues "to stand with [him] and recognize Georgia as a right-to-work state" with a yes vote.<sup>65</sup> In contrast, Representative Virgil Fludd (D-64th) highlighted victories secured by organized labor: a five-day work week, paid family and medical leave, and implementation of employee benefits plans.<sup>66</sup> Emphasizing that the quality of life is worse for working families in states with right-to-work laws, Representative Gloria Frazier (D-126th) presented data from the Bureau of Labor Statistics indicating that in right-to-work states, the average worker makes \$1,540 less each year; the median household income is \$6,400 less; the average expenditure per student is \$3,300 less; the likelihood of workplace death is thirty-six percent higher; and a higher percentage of jobs are low-wage occupations.<sup>67</sup> Representative Lindsey conceded those points but cited the long history of abuses and corruption by American union bosses, particularly in Detroit, and stressed that "unions running amok" harmed at least two significant Georgia businesses.<sup>68</sup>

65. Video Recording of House Proceedings, Mar. 4, 2013 at 1 hr., 28 min., 48 sec. (remarks by Rep. Edward Lindsey (R-54th)), <http://www.gpb.org/lawmakers/2013/day-28> [hereinafter House Video].

66. *Id.* at 1 hr., 12 min., 52 sec. (remarks by Rep. Virgil Fludd (R-64th)).

67. *Id.* at 1 hr., 18 min., 30 sec. (remarks by Rep. Gloria Frazier (D-126th)).

68. *Id.* at 1 hr., 27 min., 32 sec. (remarks by Rep. Edward Lindsey (R-54th)). Representative Lindsey mentioned Eastern Airlines and Hostess as examples of victimized local businesses. *Id.* The 1988 strike by 8,500 Eastern Airlines' Atlanta-based machinists and baggage handlers culminated after seventeen months of bitter talks between the employees and the airline. William Stockton, *Tearing Apart Eastern Airlines*, N.Y. Times, Nov. 6, 1988, available at <http://www.nytimes.com/1988/11/06/magazine/tearing-apart-eastern-airlines.html>. The parties "be[came] so embroiled over their respective visions of its future that they have been systematically tearing [Eastern] apart, chasing passengers away and causing enormous financial losses," closing down service in more than a dozen cities, allowing airplanes to mothball, and selling off the lucrative pieces of the business. *Id.* See also Robert D. McFadden, *Machinists Strike Eastern Airlines After Talks Fail*, N.Y. Times, Mar. 4, 1989, <http://www.nytimes.com/1989/03/04/us/machinists-strike-eastern-airlines-after-talks-fail.html>.

More recently, Hostess announced that it was selling its bread, snacks, and cake brands along with its thirty-three bakeries on account of a bakers union strike that crippled its ability to maintain normal production. Christopher Seward, *Hostess Brands Reopening Columbus Plant, To Hire 300*, ATLANTA J.-CONST., Apr. 24, 2013, available at <http://www.ajc.com/news/business/hostess-reopening-columbus-plant-to-hire-300/nXWgT/>.

The merits of Georgia's right-to-work status were of less concern to the Senate, as the debate focused primarily on the failed provisions of section 6 that would have drastically altered unemployment benefits eligibility. Of note, however, Senators Jason Carter (D-42nd), Steve Henson (D-41st), and Joshua McKoon (R-29th) forcefully challenged the bill's lauded pro-worker and pro-business premises. Senator Carter questioned the wisdom of exempting teachers, law enforcement, MARTA employees, and other professionals if, as suggested, the right to leave a union at any time without financial ramifications was so important.<sup>69</sup> He further argued that the state's receipt of federal funding for those groups should not define their members' rights in the workplace.<sup>70</sup> Senator Henson stressed that the bill's contracting provisions in section 3 were an attempt "to poke a nose at local control," while Senator McKoon urged lawmakers to provide employers the flexibility to decide how to handle the opt-in and out process.<sup>71</sup> The thrust of the Senators' arguments was that the legislature should not dictate to employers or municipalities how to run their respective businesses, especially regarding policy choices or the minutia of paperwork.

Thus, aside from the interesting policy perspectives enunciated during the bill's development, HB 361 standing alone is unlikely to significantly impact union membership or the Georgia labor force generally. Though framed as protection to shield workers from being forced to join unions, the bill's content is largely a regurgitation of federal law.<sup>72</sup> While at first blush a Supremacy Clause challenge may present an independent cause of action for state litigants where HB 361 may be seen to conflict with federal law, precedent and practice remain unclear.<sup>73</sup> On the other hand, the tweaks are a product of some cooperative effort between the legislature and union leaders, and accordingly no legal challenges are anticipated.<sup>74</sup> Simply, the

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69. Senate Video, *supra* note 33 at 48 min., 37 sec. (remarks by Sen. Jason Carter (D-42nd)).

70. *Id.*

71. Senate Video, *supra* note 33 at 58 min., 57 sec. (remarks by Sen. Steve Henson (D-41st)); *Id.* at 1 hr., 48 min., 7 sec. (remarks by Sen. Joshua McKoon (R-29th)).

72. See *supra* text accompanying notes 43–47.

73. See, e.g., Dustin M. Dow, *The Unambiguous Supremacy Clause*, 53 B.C. L. Rev. 1009, 1009–11 (2012) (describing Supremacy Clause jurisprudence as having "alluring simplicity" that is nonetheless confusing).

74. House Video, *supra* note 65 at 1 hr., 7 min., 32 sec. (remarks by Rep. Mark Hamilton (R-24th)); see also Lindsey Interview, *supra* note 16 (noting that elimination of the annual limitation occurred

debate surrounding HB 361's passage was not a new one, but rather a rehashing of conflicting viewpoints on economic theory and labor policy in this state. Representative Fludd perhaps captured this feeling best: "However you vote, yes or no, Georgia will continue to be a right-to-work state."<sup>75</sup> HB 361 represents one bill in a sixty-six year series that seeks to chip away the minimal, but remaining influence of labor organizations in Georgia.

*Marisa Benson & Tiffany Nichols*

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"through discussions with both representatives of labor unions and different businesses" to decide the most workable standard); Telephone Interview with Sen. Tim Golden (R-8th) (May 13, 2013) (sharing that although labor representatives did not support the bill, "they expressed a lot of appreciation [to Senator McKoon] at all of the changes made").

75. House Video, *supra* note 65 at 1 hr., 15 min., 34 sec. (remarks by Rep. Virgil Fludd (D-64th)).